IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3890 of 2006
With
SPECIAL CIVIL APPLICATION No. 3891 of 2006
With
SPECIAL CIVIL APPLICATION No. 3892 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VINUBHAI MULJIBHAI AMBALIYA - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
M/S THAKKAR ASSOC. for Petitioner(s) : 1,
MR SIRAJ GORI AGP for Respondent(s) : 1-3,
MR SHIRISH JOSHI for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 25/07/2006

ORAL JUDGMENT

1. Rule. Learned AGP Shri Siraj Gori wavies

service of rule on behalf of respondent nos. 1, 2 and 3 and learned advocate Shri Joshi wavies service of rule on behalf of respondent no.4.

2. At the joint request made by learned advocates appearing for the parties, these petitions are taken up for final disposal today.

3. The petitioners have challenged the order passed by the Additional Secretary (Appeals) on 22nd September, 2005 by which the Revision Applications of the petitioners against the order dated 7th March, 2005 passed by the Additional Registrar came to be rejected.

3.1. The petitioners herein were facing recovery certificates and recovery proceedings pursuant to such certificates for allegedly having availed loans from respondent no.4-society but not having repaid the same. The petitioner of SCA No. 3890/06 is stated to have borrowed a sum of Rs.1,60,000/- from respondent no.4 in the year 1990. Similarly petitioner of SCA No.3891/06 is alleged to have taken

loan of Rs.1,20,000/- from the said society and the petitioner in SCA No.3892/06 is also alleged to have taken a similar loan of Rs.1,20,000/- from the same society.

4. It is the case of the respondent no.4-society that the petitioners after availing of the loan could not repay the same and the respondent no.4 was, therefore, compelled to seek recovery thereof through the state machinery under the provisions contained in the Co-operative Societies Act. The petitioners contended that they have never received such loans and in fact the recovery proceedings were also held ex-parte without proper notice. They did not know about the orders passed by respondent no.3 and only when they came to know about the same, approach was made to the Additional Registrar who turned down the applications of the petitioners solely on the ground of delay. The petitioners, therefore, challenged the order dated 7th March, 2005 passed by the Additional Registrar by filing revision applications before the State Government. The State Government however by its impugned order dated 22nd September, 2005 upheld

the order passed by the Additional Registrar and rejected the revision applications of the petitioners.

5. This Court while issuing notice had required the petitioners to deposit the principal amount in two installments in each case. It is stated by learned advocate Ms.Pahwa for the petitioners that such amounts have been duly deposited by the petitioners with the respondent no.3. Accordingly, it would appear that the petitioner in SCA No.3890/06 has deposited a sum of Rs. 1,60,000/- with respondent no.3 and petitioners of SCA No.3891/06 and 3892/06 have deposited a sum of Rs.1,20,000/- each.

6. Having heard learned advocates appearing for the parties, I find that there is some justification in petitioners contending that the recovery proceedings were not brought to their notice and there is no record to demonstrate that proper notices were served on the petitioners before or after issuance of the recovery certificates. In that view of the matter the request of the petitioners to set aside the

recovery orders ought to have been considered by the authorities. Rejecting the applications of the petitioners only on the ground of delay, in facts of the present case would not be quite justified. In that view of the matter the authorities below erred in passing orders dated 7th March, 2005 and 22nd September, 2005. The petitioners should have an opportunity to pursue their defence. This however cannot be done unconditionally. At the outset while issuing notice this Court had insisted that the petitioners deposite with respondent no.3 the principal sum. I find that some additional condition is also required to be imposed to permit the petitioners to avail of the legal remedies. The amounts are stated to been borrowed way back in the year 1990. Though the stand of the petitioners is that they had never availed any such loans, the respondent no.4 had produced voluminous evidence to suggest that the petitioners are not correct in their contentions in this regard. Without concluding this issue at this stage since the authority below would be required to go into all these aspects of the matter *prima-facie* I am unable to appreciate the

stand of the petitioners that there is no evidence on record at all about the loan amount having been disbursed in their favour. This being so and the loans are stated to have been released as far back as in the year 1990, there would be considerable accumulation of the interest component also. It is stated that no amount was repaid to the respondent no.4. Considering all these aspects of the matter while remanding the proceedings before the District Registrar it is provided that the District Registrar shall pass fresh orders in accordance with law after hearing both sides. The petitioner shall co-operate with expeditious hearing of the remand proceedings. While requiring the said authority to hear the petitioners and pass fresh orders in accordance with law, I find that the petitioners must further deposit with respondent no.3 the same sum which they have deposited before this Court under the order dated 2nd March, 2006. The petitioners would, therefore, deposit with respondent no.3 additional sums of Rs.160,000/-, Rs.1,20,000/- and Rs.1,20,000/- each respectively in SCA Nos. 3890/06, 3891/06 and 3892/06. This shall be done within a period of two

months from today. Such deposit shall be subject to final outcome of the remand proceedings. On the premise that the said condition shall be fulfilled the proceedings are remanded to the District Registrar. For the above purpose, the impugned orders dated 7th March, 2005 and 22nd September, 2005 are quashed. In case the petitioners or any of them fail to comply with the above condition the orders shall automatically revive qua such defaulting party and such petitions be treated to have been rejected. Till the District Registrar passes fresh order in accordance with law no further coercive recovery shall be made. With these directions, the petitions are disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

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